

A
DISSERTATION

ON THE

TOLCLANDE AND BOCLANDE

OF THE

SAXONS.

DISSEMINATION

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DISSERTATION

ON THE

FOLCLANDE AND BOCLANDE

OF THE

S A X O N S.

——— LONGÆ

AMBAGES, SED SUMMA SEQUAR FASTIGIA RERUM.

VIRG.

L O N D O N:

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A
DISSERTATION
ON THE
FOLCLANDE AND BOCLANDE.

INTRODUCTION.

THE various tribes of barbarians that inhabited the northern regions of Europe and Asia were closely connected in their manners, customs, and institutions, the circumstances in which they disagreed were minute, the great outlines were the same.

A warlike independent spirit, the ferocity of manners which it ingendered, an aversion to agriculture, and a contempt for the calmer occupations of life were every where conspicuous; hunting was their only amusement, and war their only profession; hospitable and friendly in their tents, treacherous and implacable in their incursions, they treated their guests with kindness,

A 2 their

their prisoners with barbarity.—In these instances the Saxon on the shore of the Baltic was not to be distinguished from the Hun on the banks of the Araxes ^a.

From the wandering mode of life to which the Scythian and German nations were invariably addicted, they required an immense extent of territory; to this roving inclination, and to the necessity resulting from it, we ought to attribute their numerous emigrations.

The Gauls at a very early period invaded Greece, destroyed Corinth, and established a colony in the Lesser Asia; the Cimbri and Boii, when exterminated by Marius, were undoubtedly in quest of a more commodious settlement; for we find them upon their march with their wives and their children, their flocks and their herds, and every thing that they held either valuable or sacred.

After the resistance of many centuries, the Western Empire was overwhelmed, by successive inundations of the Gothic and Vandalic tribes, who raised upon its ruins a variety of states independent of each other, and directed by a new and extraordinary species of policy.

The government of the Germanic body we are assured was of a republican nature, the various districts and cities of which it was composed elected their respective chiefs, who presided in council, determined controversies, and led their faithful companions to the combat ^b.

Though nothing feudal can be discovered in this connexion between the chief and his vassal or Comes, the fee which the latter was bound to defend being no where described ^c, yet it

^a Am. Marcel. 436.

^b Cæf. de bel. Gal. c. 6. p. 233. Tac. de mor. Germ. 637.

^c Tac. de mor. Germ. 939. Epulæ pro stipendio cedunt.

was undoubtedly of infinite advantage to the founders of the feudal constitution by strengthening that mutual tie so essential to the very existence of a Fief.

When compelled by the increase of population and the stings of famine, or instigated by their restless disposition, they wandered forth in search of new habitations; they chose a supreme leader with the title of king, but with an authority extremely limited, and subject to the controul of the army. To him the conduct of the expedition was committed, the power of negotiating, and of dividing the conquered territory; and here his authority had ceased, but necessity interposed and made it perpetual.

Whilst they acted in conjunction and under the direction of their chief, their progress was irresistible and their dominion secure; but if these ties had been dissolved, they had fallen an easy prey to their neighbours, or even to the subjugated people.

This consequence was foreseen by these rude and unlettered nations, and the result of their prudence was the feudal constitution.

For the preservation of their new acquisitions it was stipulated, that the grant of land from the king to his *comes* should be only conditional—that the latter should attend the former in his wars—and that the fee should revert to the king upon the death of the vassal—his perpetration of some enormous crime—or his non-performance of the military service; he being in these three instances either unable, unfit, or unwilling to defend his allotment.

As this constitution could not subsist without an head, the authority of the king was continued; but the vassals still retained their privileges, by them in their assemblies or parliaments, he was advised, admonished, and controuled.

Here

Here we see a rude sketch of the infant state of the feudal system, when it was first established in Europe between the sixth and the ninth centuries by the Visi-goths, the Lombards, the Franks, and the Saxons; and by their Asiatic brethren at a much later period in the remotest parts of the East ^d.

In the beginning of the seventh century the customs of the Feudists in Spain, Italy, and France had been collected and formed into a code by Reccessuinthuse, Rotharis^f, and Charlemagne^g, the Saxons had even then been long established in Britain, can we suppose that they alone neglected to adopt a political regulation so extremely well adapted to the necessities, and to the genius of the times?

This notion, however improbable, has been embraced by most of our legal antiquarians, many of whom have fixed the æra of the introduction of the Feuds at the Norman invasion, whilst others have contented themselves with allowing that they might possibly have been *known* to the Saxons, and have then quietly proceeded in the beaten track without any farther investigation.

When we consider that without a reference to the Folclande and Boclande of the Saxons, it is impossible to form an adequate

^d Quiconque est un peu instruit, sait, que le gouvernement de mogul est depuis Gengiz Khan un gouvernement feudal; le grand Mogol est semblable à l'empereur d'Allemagne; les Soubas sont les princes de l'empire, devenus souverains chacun dans les provinces; les Nabobs sont les possesseurs des grand arriere fiefs.

Voltaire. Fragments sur l'Inde. 71. Orme. Hist. of India.

Sir James Potter's account of the Turks. The Turks have their fiefs called Timariots, and in many respects a bashaw resembles a feudal lord.

^e Montesqu. l'Esprit des Loix, l. 28. c. 1. Notes.

^f Un. Hist. vol. 19. p. 634, 635.

^g Montesqu. l'Esprit des Loix, l. 31. c. 9.

idea of the point in question; we cannot help being surprized that these terms have been so little attended to; we have been favoured indeed with a few conjectures, but the sanction of authority is wanting to almost all.

In this instance the great oracle of our law, Sir Edward Coke, is like other oracles, ambiguous and unsatisfactory; he has left us two contradictory interpretations of this puzzling distinction of our Saxon progenitors, which so far from elucidating the point, have involved it in tenfold obscurity ^b.

A blind subscription to authoritative dicta is always wrong, here it would be peculiarly absurd; deserted by our leaders, and bewildered in the mazes of antiquity, our last resource is in those best and least fallible guides the Saxon constitutions.

An enquiry of this kind has been made a few years since by a gentleman of known learning, and extensive abilities, in the course of which we were presented with some very ingenious, though general deductions, the complicated nature of the work preventing a minuter discussion ⁱ.

Upon the whole however this explanation is so agreeable to reason, and so strongly supported by authority, that I should have continued in a state of perfect conviction, had it not been expressly controverted in a late publication, where a contrary hypothesis is maintained with some degree of pertinacity ^k.

Though my faith was not much shaken by this *obiter* opinion, yet it excited my curiosity to discover the grounds upon which these adverse doctrines were founded; how I have succeeded the following pages will declare.

^b Co. Cop. 2, 3, 10. Co. Litt. 86.

ⁱ Dalrymp. Feud. Prop. 8.

^k Hargr. Ed. Co. Litt. Notes 86.

But before I proceed to the consideration of the feudal property under the Saxon government, I must beg to be indulged in a few preliminary observations.

The question may perhaps be asked in what manner is a modern lawyer interested in the present argument? to him the Saxon or Norman original of the feudal system is equally unimportant:—to which I answer; that an acquaintance with this celebrated constitution is essentially necessary to the illustration of the rules and maxims of the common law; for if we wish to pervade the spirit and reason of a law, we must investigate the circumstances that attended its institution, as the character of the legislator, the nature of the government, and the genius of the times.

For example, many of the oppressive refinements of the feudal law were annihilated by the great charter, many of its wholesome regulations were confirmed; it follows, that without a knowledge of that law, we can never comprehend the efficacy of the constitutions of Runnymede, or do justice to our virtuous progenitors who sealed them with their blood.

The learning of our modern tenures appears at first view to be extremely obscure; we are apt, for instance, to reprobate escheats pro delicto tenentis as an iniquitous mode of punishing the innocent of the third and fourth generation; by a reference however to these *antiquated customs of the Feudists*, the darkness is dispelled, and reason and equity supply the place of absurdity and injustice.

If we attribute to the Normans the introduction of the Beneficium or feud, with its necessary consequences, as well as its oppressive deductions; we must regard it as an innovation upon the common law, the arbitrary imposition of a tyrant inimical to the liberties of the suspected subjects of his acquired territory.

If

If we derive the feudal constitution from the Saxons, it assumes a milder form; we connect it with a government that tended to promote the liberty of the subject, and to preserve it from infringement; with the names of Alfred and of Edward, and with the laws that have made those names venerable.

In an age of continual emigrations and consequently of invasions, the military tenure was well adapted to the sudden emergence of repelling an incursion; it was for this political benefit, and not for the emolument of their kings, that it was established among the Saxons.

It was under the Norman monarchs, that the feudal institutions were first perverted into instruments of oppression; a system originally simple in its construction, assumed in their hands a much more complicated form; aids were levied upon various pretences, primer feifins and arbitrary reliefs were rigorously exacted, the rights of wardship and marriage were asserted, and at length by the render of escuage, in lieu of the personal service, the military spirit entirely evaporated.

SECTION I.

BOCLANDE, Booklande, or Charter-land is described to be land granted by the king to his thains, and limited to them and their heirs by the authority of a charter ^a.

Folclande or Folkland was that portion of the country which remained in the hands of the people in general, unsecured by charter, and unfettered by limitations ^b.

Boclande is sometimes denominated Thainlande, Tainlande, and Teinlande from the Thegen, Tainus or Baron to whom it invariably appertained ^c.

The Eorl, Geref, or Reve was the supreme governor of the Folclande, and hence it is frequently described under the name of Revelande. Sir Edward Coke informs us, that the Boclande differed nothing from Freehold land, and that the Folcland had the same affinity to Copyhold land ^d.

We are not told whether these Freehold lands are to be considered as held in Knight-service, or in Socage, but we may collect from the following sections that the latter is implied; for the services which he enumerates as incidental to Boclande, are

^a Spelm. Glos. 64. Tit. Terra Hæreditaria.

^b This I take to be a more probable definition than that of Spelman and Coke a populi testimonio.

^c That the Boclande was held by the Thains is manifest from many passages in the Saxon constitutions; "Si quis Thanorum sit qui in feodo suo (boclanæ) Ecclesiam habet in qua sit cœmeterium, det tunc tertiam partem propriarum decimarum suarum Ecclesiæ suæ.

L. L. Edg. 2. L. L. Cnut. 1. It was not however distinguished by the appellation of Thainlande till a late period of the Saxon government.

^d Co. Cop. 3, 4.

not military and indefinite, but peaceable and certain, the sure indications of a Socage tenure^e.

This doctrine is laid down with all imaginable precision; how great then must be our astonishment, when we read in another work of the same venerable and learned judge, that Knight-service is called Tainlande, and Socage Revelande, an explanation immediately adverse to the former^f.

If we embrace his first idea, and suppose that the Boclande was held in Socage, and the Folclande in Villenage, we involve ourselves in innumerable difficulties and errors, we controvert the indisputable authority of our ancient laws, we assert that the military tenure was unknown to our Saxon ancestors, and we very graciously bestow the property of land upon Villeins, who were always incapable of enjoying it.

The traits of Boclande and Folclande are first discovered in an ordinance of Æthelbert, which informs us that the country was divided into two portions, one of them more immediately appertaining to the King and his Thains, the other under the jurisdiction of the Eorl^g, who was annually elected by the freemen of every shire, and was denominated Eorl, Ealdorman, or Gerefa, and in latter times Greve, or Reve^h; he it was that

^e As the payment of a *certain rent*, the reservation of a *particular common* to the lord, and the right of taking a fixed number of estovers.

^f Co. Litt. 86.

^g L. L. Æthelb. 5. 13. Si in regis villa aliquis occiderit 50 solidis amendet, si in comitis villa (Eopely. tune.) aliquem occiderit 12 solidis amercet.

^h We are told by two very celebrated writers, that *Cople* was the proper denomination of the Saxon governor of a shire; but the word Cople does not exist in the language; and in the very passage alluded to, we find him described by his proper title of Eorl, Eopl 7 Leopl, þegen 7 þeowen. Montesq. l'Esp. des L. l. 30. c. 18. Dalrymp. F. Prop. 12. Jud. Civ. Lon. Ed. Wilk. fol. 70.

convened the Folcmote¹, which was composed of the possessors of Folclande, and together with the bishop administered the oath of allegiance to the freemen, over whom he presided when they sat in their judicial capacity, and whose decrees it was his duty to enforce^k.

There is a notion that the Gerefa was vicegerent to the Eorl or Ealdorman, but this was certainly not the case, since we are informed by a law of Edward the Confessor that the Gerefa or Greve was anciently called the Ealdorman^l; they are also mentioned in distinct ordinances as the chief rulers of the shires without any hint of a subordination to each other^m; we ought therefore to interpret Gerefa, when used, as it sometimes is, in a secondary sense, Vicarius or Thrihin-Gerefa, that is, the superintendant of a third part of a county, consisting of three or four hundreds, over each of which a bailiff presided, who was subordinate to the Thrihin-Gerefa, as he himself was to the Eorlⁿ; the Vice-Comes or Sheriff was in fact a Norman officer, instituted of necessity, when the counties were converted into Fiefs, and when the dignity of Count became hereditary, as in that warlike age the administration of justice in the Folcmote of an extensive county, was totally inconsistent with the performance of the military service^o.

¹ Populi concessus.

² L. L. Edw. Conf. 35. L. L. Cnut. 8.

³ L. L. Edw. Conf. 35. Jun. Etimol. Earl and Sheriff. Sir John Fortescue Aland's Notes on Fortescue Abf. L. Mon. 62.

^m L. L. Inæ. Jud. Civ. Lon. L. L. Alfr. 34, &c.

ⁿ L. L. Edw. Conf. 34. Erant enim aliæ potestates super Wapentachium, quas vocabant þrihlingay Jle's, quod erat tertia pars provincie, qui vero super eos dominabantur, vocabantur þrihlin-gerefar. From these Thrihings the modern Ridings are derived, (Blackst. Com. 1. 118) as are the Laths from Leth.

^o Dalrymp. F. Prop. 21. Chart. Will. Conq.

Under the Saxon government the charge of leading the freemen to battle was committed to the Heertoch or Duke, who was elected in every shire, and was invested with a coercive authority during the continuance of the war, and with a power of punishing the mutinous and the disobedient p.

When Gaul was subdued by the Franks and Burgundians, the ancient free inhabitants were permitted to retain part of their possessions, and were placed under the jurisdiction of the Count, as were all the Freemen, whether Roman or Barbarian, who were not attached to particular lords by the ties of the feudal constitution q.

The Duces, Marechalli, and Constabularii, whose command extended over several provinces, were the leaders of the Liberi in the field r; the Count presided in the provincial Synod, which was termed the Placita of the Freemen, who are described to be those who on the one hand had no Beneficia or Fiefs, and on the other were not subject to the base services of Villenage s.

These free or allodial lands were governed by the Count, and his inferior officers the Grafones t or Vicarii, and the Centenarii, who exercised both a civil and military jurisdiction over their respective districts and hundreds u.

The Count in France was the supreme civil governor of the Freemen or Allodiarum of his province, so was the Eorl in England;—the Duke led the Freemen to battle, so did the Heertoch;—the inferior officers of the Count were the Grafones

p L. L. Edw. Conf. 36.

q Montesq. l'Esp. des L. l. 30. c. 8.

r Montesq. l'Esp. des L. l. 30. c. 18. L. L. Edw. Conf. 36.

s Montesq. l'Esp. des L. l. 30. c. 17 & 18. Cap. Charlemagne, 3 & 4.

t Grafio is nothing more than Gerefa, Greve, or Reve latinized.

u Montesq. l'Esp. des L. l. 30. c. 18.

and the *Centenarii*, those of the Eorl were the *Gerefas* of the Thrihings, and the *Bailiffs* of the *Hundreds*;—the court of the Count was termed the Placita or Convention of the *Allodiarum*, the court of the Eorl the Folcmote or Assembly of the Freemen;—after this can any one contend that the Eorl was neither more nor less than the Overseer of an herd of slaves; or in other words, that the Folclande was held in Villenage?

This opinion has been considerably strengthened by the false idea annexed to the *Ceorls* (who are always described as immediately dependent upon the Eorl)^w and ought to be rendered *Coloni*, *Rustici*; the word *Ceorl* however has been often confounded with *Ceorlisc*, and has been translated (though with an equal mixture of error and absurdity) *Servus*, *Villanus*, the proper interpretation of the latter^x.

We know that the jurisdiction of the Eorl was confined to the Folclande; if none but slaves inhabited that territory, of whom was the Folcmote in which he presided, composed? in this case it could not have existed, for the *Ceorliscs* of the Saxons were the same wretched and despised beings as the *Villeins* of the Normans^y, they were doomed to perpetual slavery on a particular spot, whilst those who dared to protect them from the brutality of their tyrants, or to harbour them for their own emolument, were liable to an exorbitant fine^z.

On the other hand, if we suppose the Folclande to have been possessed by the Free *Ceorls* or Yeomen, we have a Folcmote exactly corresponding with the convention of the freemen in France.

^w Ind. Civ. Lon. Ed. Wilk. fol. 70, &c.

^x L. L. Angl. Sax. Ed. Wilk.

^y Bract. l. 4. c. 28.

^z L. L. Inæ. 30.

The Folclande was certainly allodial, for it was held of no superior^a; the freemen were subject to the Eorl in a political, but not in a feudal capacity; they paid their share of the national taxes^b, and were obliged to provide themselves with arms for their own immediate security^c, but we nowhere find that heriots were exacted of them, that the military service was required, or that the Folclande escheated to the Eorl by the delinquency of the tenant.

The Folclande bore a striking resemblance in many particulars to the Gavelkind Tenure before it was corrupted by those Norman innovations the *acknowledgment of a superior*, and the *fealty* in consequence of it.

Gavelkind is the mode in which the Gavel-land was holden, the signification of Gavel-land is land liable to tribute or taxes^d; in the league of Alfred and Guthrun the Dane we find the following passage; "Si quis occidatur, nos omnes admittimus æque charum nobis Anglum & Dacum ad quatuor marcas fustis auri, excepto Colono qui terram Censualem (Tayol-lanæ) possidet, & redemptiones eorum sint æque charæ nimirum ducentorum solidorum^e."

"The Terra Censualis or Gavel-land was plainly so called to distinguish it from the Boclande or the land held by Knights--

^a Dalrymp. F. Prop. 12.

^b Romefcot, Danegeld, &c. L. L. Edw. Conf. 10, 11.

^c L. L. Edw. Conf. 35.

^d Tavel-lanæ, Tayol-lanæ, and not from the fanciful etymology of gix-eal-cyn; that is, Give all in kind. Sir J. F. Aland's Notes on Fortescue on Abf. & Lim. Mon. 72. Lambard is also of opinion that Gavelkind is derived from gayol tribute or tax, but supposes it to be the rent paid by the tenant in socage to the lord. Lamb. Peramb. 528. The old etymology of gix-eal-cyn may be found in Somn. Gavelk. 4.

^e Fœd. Alfr. & Guth. 2. butan xem ceopl. xē on gayol-lanæ-jiv.

service, from which, and all the slavery thereto incident, it was exempt by the payment of this Gafol or Tribute^f."

The Gavelkind lands were devisable by will by special custom, they did not escheat in case of an attainder or execution for felony, neither did they descend to the eldest, youngest, or any one son in particular, but to all the sons together, any of whom might have alienated by deed of feofment at the age of fifteen; these are the principal properties of this tenure, which before the Norman conquest, according to the current opinion, was the general custom of the realm^g.

But as this appellation of Gavel or Gafol-land is only to be met with in a single instance throughout the whole body of our ancient laws, we may reasonably conclude that the tenure is described under some synonymous term, which of course must have embraced a very large share of the Saxon property^h.

This naturally refers us to the grand division of Folclande and Boclande; if we suppose the Gavel-lande to be the same as the Boclande, we involve ourselves in a labyrinth of absurdities; if on the contrary we hold it to be synonymous with the Folclande, we account for its peculiarities in a rational and satisfactory manner.

The Gavelkind lands are said to have been possessed by the Ceorlsⁱ; now we know that these Ceorls or Coloni were also the possessors of the Folclande, that they owed no service to any particular lord, but were liable however to the payment of the national imposts^k; this accounts for the appellation of Gavel or

^f Sir J. F. Aland's Notes on Fort. on Abf. & Lim. Mon. p. 72.

^g Seld. Analect. 2, 7.

^h Glanv. 73.

ⁱ Fœd. Alfr. & Guth. 2.

^k L. L. Edw. Conf. 10, 11.

Tributary land given to the Folclande, in contradistinction to the Boclande, which was held of the King and his Thains by the performance of the military service.

By a law of Æthelbert¹ a great disparity was established between the Weregild^m of a King's Thain or Theoden, and that of a Ceorl or an inhabitant of the Folclande; in the first instance the Weregild was fifty shillings, in the last only twelve; in the Salic lawⁿ the *redemptio capitis* of an Antrustio or King's Vassal was six hundred sous, that of a *liber homo* or a dependent of the Count, if a Frank two hundred, and if a Roman one hundred; in the league between Alfred and Guthrun above cited we find the same if not a greater disagreement between the Weregild of the people in general, and that of the husbandmen, who are particularly excepted as inhabiting the Gavel-lands; the difference is rationally accounted for by supposing that in this instance, as in the others, the King's Vassals are marked out in the general description, and the Freemen, Allodiarrii or the holders of the Folclande in the exception.

The Gavelkind land did not *escheat* in case of attainder or execution for *felony*; if we suppose it to have been the Folclande, the reason is obvious, it was perfectly *allodial* and held of no *superior*.

The Gavel-land was nevertheless liable to *forfeiture* for *treason*^o; in like manner we are informed that the proprietors of the Folclande were subject to this mode of punishment, they are

¹ L. L. Æthelb. 5, 13.

^m *wepegild* *redemptio hominis*, from *pege* *homo* and *gild* *redemptio*, *solutio*; sometimes *manbote* *compensatio hominis*, by it the slayer was redeemed from death, and the injury done the kindred of the slain, according to the rude notions of that barbarous age, in some measure compensated.

ⁿ L. L. Sal. 44, 66, 74.

L. L. Rip. 2, 7.

• Somn. Gavelk. 53.

even pointed out to us in a constitution of Alfred in a very particular manner: "Si quis vitæ regis infidietur per se, vel per ultores mercede conductos, vel servos suos, vita privetur & omnibus qua possidet:—ita etiam ordinamus pro omnibus personis tam colonis quam comitibus^p:" that is, that the penalties contained in this ordinance shall not only extend to the King's immediate vassals, the Thains and Theodens; but also to all other persons whatsoever, whether Eorls or Ceorls, who have taken the oath of allegiance, though without the feudal incumbrances of Homage and Fealty.

Again, Gavelkind lands were devisable by will before the conquest^q; we are expressly told that the Thains and Theodens were prohibited from alienating their Boclande to the prejudice of their heirs, and in opposition to their original charters^r; hence it appears that the law of Canute de intestatis (which certainly alluded to the possessors of Boclandes^s) can by no means be extended to real property, as a reference to the Saxon will render still more evident^t.

^p L. L. Ælfr. 4.

^q F. N. B. 198.

^r L. L. Ælfr. 37.

^s This is proved by the mention of Herriots; which were only paid by the holders of Boclande, as appears by the Chapter of Herriots, L. L. Cnut. 69. where the Eorls, with the principal and inferior Thains are enumerated as liable to that imposition, but not the Ceorls or inhabitants of the Folclande.—Here it may be observed, that although the Eorls did not hold their shires as fiefs, yet, as they were generally elected from amongst the principal nobility, it is to be presumed that they were for the most part in possession of Boclande.

^t *sonne ne teo ye hlaron na mane on hix ætra butan hix jithe hepegeara*, tunc non assumat sibi Dominus plus possessionis ipsius, quam justum armamentum, i. e. herriotum; if the real property had been intended, the word would not have been æht, but Boclanæ, or simply lanæ. L. L. Cnut. 68.

The inhabitant of the Folclande on the contrary was not restrained by these limitations, his land was allodial, and not usufructuary, and he disposed of it according to his inclination or caprice^u.

In case of intestacy the Gavelkind lands were divided amongst all the sons, the Boclande we are well assured was invariably transmitted to the first-born; whether this was or was not the case, with respect to the Folclande we are nowhere informed; but surely we have the greatest reason to suppose that in this particular, as well as in all others, it coincided with the Gavel-land.

When the Saxons were introduced into the kingdom by Vortigern for its defence against the Scots and Picts, they had neither time nor inclination for the culture of land; it is probable that this fell to the lot of the less warlike though more industrious Britons, who retained their former possessions under the powerful protection of their new allies.

In return however for fighting the battles of the Britons, the Saxons at length demanded a settlement for themselves; as they had by this time obtained a firm footing upon the island, the intimidated natives complied with their requisition, and assigned them the territory of Kent for the seat of the new and dangerous colony.

But as this settlement was *granted* to the Saxons for their services, and not *acquired* by their arms, the military tenure was not necessary to support a right, so intirely unimpeached and secure; the lands were accordingly divided among the followers of Hengist upon allodial principles and unincumbered with the feudal restrictions.

Here then we may date the origin of the Folclande or Gavel-lande, which always continued to be the prevailing custom of Kent, and was afterwards diffused throughout the whole kingdom by the extorted gifts of the Britons, and by the bounty of the Saxon monarchs, who granted small tracts of uncultivated land to their needy, but at this period industrious and domesticated subjects.

When these fortunate barbarians had driven the ancient inhabitants to their woods and fastnesses, they were compelled by necessity to cherish the arts of peace; their rugged tempers were softened, and agriculture grew into estimation; content with the humble appellation of Ceorls they lived in security under the equitable dominion of their Eorls; they even preferred the purchase of Folclande, to the donation of Boclande from their Kings; in the first instance they pursued their rural occupations without interruption, in the last they were called away by the military obligations of their tenure.

So great were these conveniencies, and so strong was this abhorrence of the military service, that we find the possessors of Gavel-land contending for their privileges with the Conqueror himself, and in general their firmness prevailed; but the Eorl from a *judicial officer* had now become a *feudal lord*, and the maxim, that "all lands must be holden," had been adopted; hence by a kind of composition it was stipulated, that the Gavelkind customs should remain inviolate; but on the other hand, the oath of fidelity which had been taken to the King in the presence of the Eorl, was transferred to the Count himself, the attendance of the tenant at the Supemote was enforced, and the land was said to be holden by fealty and suit of court w.

The few who did not defend their possessions, which at the same time were not considerable to be erected into fiefs, were divested of their privileges, but were suffered to retain their lands by performing certain free services, and complying with certain conditions *; these Free or Socage tenures were insignificant at first, but soon became of consequence by the disgavelling of Gavel-land, and by the enfranchisement of fiefs; for even in this humble state, the Socage had manifestly the advantage of the Feudal Tenures †,

The tenures in Socage or Fraunke-Ferme ‡ extended over the whole kingdom, the modern Gravelkind tenures are confined to a particular division of it; hence it has been rashly concluded that the latter are derived from the former, though in fact they are only *collaterally* connected with each other, and ought to be considered as various modifications of the Folclande or Gavel-lande of the Saxons.

* From *roc*, *Libertas* or *Privilegium*, and not from *Soca*, a plough; hence the *Socmen* or *Liberi*. *Somn. Gavelk.* 138. *Litt.* 119.

† *Blackst. Com.* 2, 86.

‡ *Britt. c.* 66.

SECTION II.

A FEUD, Fee, or Fief may be defined to be land granted by a Lord to his Vassal, as a reward for his past services in war, and as a bond to insure them in future.

I have already observed, that the Feudal Vassals were liable to the military service, and that the Fief escheated to the Lord by the neglect, the crime, and the death of the tenant.

The Tenants in Capite attended the King in his great council, and exercised a civil and criminal jurisdiction over the immediate Vassals of their respective Seignories.

It remains for us to examine whether the above relations subsisted between the Saxon monarchs and the Thains or Holders of Boclande, and between the latter and their Theodens or Rear-Vassals.

Thegen, Thainus, or Thain^a, in its primary signification is interpreted Miles, so the Cyninges Thegen is emphatically translated the King's Soldier; but as he was always an approved and illustrious warrior of the first rank, this denomination of King's Thain became a title of honour, and may be considered as equivalent to Optimas or Baro.

The King's Thains answered to the Antrustiones^b of the French law, like them they were the faithful companions of the King in the hour of danger, and like them they received a portion of the conquered territory as a reward.

^a thegen, thegn.

^b Antrustiones, Fideles. Montesqu. l'Esprit des Loix, l. 33. c. 16. The great vassals upon the Continent were also called Drudes and Drudi, Fideles or Antrustiones, "sine solatio et comitatu Drudorum atque Vassorum." Capitula Rhementis et Rhotomagentis provinciarum ad Ludovic. Regem. an. 818.

The Fiefs upon the Continent were originally arbitrary, and entirely dependent upon the will of the King; the period of their duration was afterwards enlarged to a certain number of years, and then extended to the lives of the Feudatories, till at length they were permitted to deliver them down in an uninterrupted succession to their heirs^c.

We are well assured that the same limited donations existed in our own island during the uncultivated state of its interior policy; the discovery of the inconveniences that attended them may justly be attributed to the penetrating eye of Alfred;—he saw that the warlike ardour of the Thain was of necessity abated, when the welfare of his posterity was so immediately connected with his own life;—to remedy this defect, the Fiefs were made descendible to the lineal heirs of the acquiring ancestor, and the eye of the Thain to his chief became of a firmer texture.

Though the King's Thains are frequently mentioned in the earlier ages of the Saxon law, and the distinction marked out between their territories and those of the Eorl^d, yet we do not find the Boclande particularly described as Terra Hæreditaria, till we read of it in the following constitution of Alfred^e;

“ Si

^c Montesq. l'Esprit des Loix, l. 31. c. 25. In Italy the Beneficia were rendered hereditary, first in the direct male line, secondly in the collateral male line, and thirdly in the female line. L. L. Longobard, c. 11. tit. 8.

^d L. L. Æthelb. Inæ. &c. vid. sup.

^e L. L. Alfr. 37. L. L. Edw. Conf. 35. In the original the law runs thus; “ Se mon yepc boclanse hæbbe 7 him his magay læwen þonne yetton þe 7 he hit ne moyte yllan of his mæg-bunge gix 7eþ biþe gepitt oppe gepittneyre þat hit þæra manna 7onþos. 7æpe 7e hit 7numan 7e7pinton;” the word maga, maga, in its general sense is potens, valens; mæg or maga is also sometimes translated propinquus, cognatus, but never parens; surely the context requires it in this

“ Si quis terram hæreditariam habeat, quam potentes aut Mag-
nates ejus ipsi reliquerunt, tunc statuimus, ut eam non vendat
a cognatis hæredibus suis; si adsit scriptura vel testis quod illi
viro prohibitum sit, qui eam ab initio acquisivit.”

By this it appears that the Charters which were granted by
the King and his Thains to the holders of Boclande, were ex-
tended to the heirs of the first acquirers, who were permitted by
the lords to retain the fiefs of their ancestors, but were prohi-
bited from alienating or disposing of them in any manner re-
pugnant to the designation of the original charter.

The Boclande is generally translated Terra-Hæreditaria, not
because the fee descended to the present proprietor from his ac-
quiring ancestor^f, but because the holder of Boclande was bound
by his charter to transmit it to the heirs of his body.

Before the establishment of subinfeudations the feudal consti-
tution was of a very lax and impotent construction, the Thains
and the Antrustiones, amongst whom the great fiefs were distri-
buted, were few in number and jealous of each other's influence
and reputation; when they were called into the field they were
attended, if there was a prospect of plunder, by a cloud of depen-

this place to be rendered potens in allusion to the lord, in Mss. Roff.
yldran (ylþan) seniores is substituted in the room of maga; this is
probably a sophisticated reading; the word senior however is often
applied by the Saxons to their superiors, as Ealdorman, &c. Senatores
vocabantur Aldermanni non propter ætatem, sed sapientiam, & digni-
tatem. L. L. Edw. Conf. 35.

^f It has been said that the prohibitory law of Alfred above cited
alluded to all holders of land whatsoever, who were in by descent, and
that a power of alienating was also given by implication to all ori-
ginal acquirers; this mistake is derived from the duplicity of the
term terra hæreditaria, and the insertion of parentes instead of potentes;
it is cleared up however by the Saxon words Boclande and maga,
which plainly confine the operation of the law to the feuds, and render
the above construction necessary. Dalrymp. Feud. Prop. 95, 96, 97.

dents;

dents; but when this was not the case, the army was oftentimes composed of a few arrogant chieftains, without soldiers, and without unanimity.

As a provision against this inconvenience, the great vassals were permitted to infeoff their dependents, who received their fiefs of the mesne Lord, upon the same terms as he himself did of the Lord paramount.

In France, when the Fiefs became hereditary the Rear-fiefs partook of that quality^g; but in Italy they still continue to be temporary grants, and liable to revocation at the pleasure of the chief^h.

The rear-vassals amongst the Saxons were distinguished by the name of Theodens or lords, and are described as Thains of an inferior degree; in the constitutions of London all the freemen of the realm are summed up under the distinct denominations of Eorl and Ceorl, Thegen and Theodenⁱ, which ought to be translated Earl and Yeoman^k, Baron and Lord^l, the latter exactly corresponding with the Norman Vavasour, and the Dominus of the middle age.

The appellation of Drenches and Drengi was also applied to the rear-vassals, “Hujus manerii aliam terram xv hominis, quos Drenches vocabant, pro xv maneriis tenebant.”

“Ad ipsum manerium pertinebant xxxiv Drenches, et totidem maneria habebant^m.” In these instances the two manors were originally holden of the King in Capite, and were after-

^g Montesq. l'Esp. des L. l. 31. c. 35.

^h Book of the Fiefs, l. 7. c. 1.

ⁱ Jud. Civ. Lon. Edit. in Æthelst.

^k From Geong, Juvenis.

^l The word Theoden is most unaccountably translated Rusticus, in Wilk. Edit. L. L. A. Sax.

^m Domesday, Tit. Cestrefc.

wards parcelled out, the one into fifteen and the other into thirty-two smaller manors, and granted by the lord to the Drengi in the nature of Rear-fiefs; so that the Drengi ought to be considered as inferior Lords or Knights, and the Thaini as Tenants in Capite or Baronsⁿ.

These Rear-fiefs are proved to be descendible by the law of Canute, in which the Herriot of the inferior Thain (*meþemþa þegna*) is distinguished from that of the King's Thain or Mesne Lord^o.

The Saxon laws that are transmitted to us are all of a municipal nature; they regulate the interior policy of the realm, they annex punishments to crimes, and they point out the duty of the subordinate magistrates; but with respect to the law of nations they are totally silent, the rights of war and peace are no where defined; in so domestic a code we cannot be surprized that the attendance of the vassal in the field at the call of his lord should be seldom explicitly enjoined.

The laws of Edward the Confessor are principally declaratory of the ancient constitutions of the Saxons, which had been altered, or had fallen into disuse during the usurpation of the Danes^p; it is among these ordinances that we meet with the following passages in confirmation of the military service; "*De bent etiam universi liberi homines totius regni, juxta facultates suas, et possessiones, et juxta catalla sua, et secundum feodum*

ⁿ Quod igitur in Charta lego Teignis, & Drengis, & hominibus subintelligo Baronibus, Militibus, & libere Tenentibus. Spelm. Gloss. Tit. Drenches.

^o L. L. Cnut. 69.

^p When Stephen swore at his coronation to establish the laws of Edward the Confessor, those laws were considered as a compendium of the Saxon constitutions.

suum et secundum tenementa sua arma habere, et illa prompta conservare ad tuitionem regni et servitium dominorum suorum, juxta preceptum domini regis explendum et peragendum; non debent illa invadiare, nec extra regnum vendere, sed hæredibus suis in extremis legare, ad servitium tenementorum suorum dominis suis explendum cum opus adfuerit &c.” All the Freemen in the realm are included in the above constitution, the Socmen as well as the possessors of Boclande; the former we have already observed were obliged to hold themselves in readiness for the immediate defence of the kingdom^r, the latter are here commanded to be armed according to the magnitude of their Fiefs, for the service of their Lords; they are also prohibited from disposing of their warlike accoutrements, and are directed to transmit them to their heirs, to enable them to perform the obligation of their tenures, when their Lords should require it of their hands. Here we find the military service of the Vassals distinguished with the greatest precision from the mere defensive operations of the Liberi, these were never called upon but for the general defence of the realm, those were liable to the service of their Tenures whenever their Lord had a real or a fancied injury to revenge.

From the words “*secundum feodum suum*,” it is probable that there were degrees in the military service, that the possessors of the larger fiefs were obliged to be completely armed, and were liable to a longer attendance than the less considerable Vassals; in like manner as in the Norman age, the Tenant

* L. L. Edw. Conf. 35.

† Lewis the Debonnaire granted lands to certain Spaniards, who fled from the Saracens, on condition that they should serve in the army like the Liberi; by the Liberi are always meant the Allodiarrii, Capit. V. 1. p. 500.

of a Knight's Fee was bound to remain in the field for forty days, whilst the service of the Tenant of half a Fee was rendered in half that term^s.

The Reversion of the Fief to the Lord upon the nonperformance of the military service, is the first principle of the Feudal constitution, and has accordingly been enforced with the greatest rigour, in every country where that constitution has been established; amongst the Saxons the consequences of deserting his Lord in time of actual war were still more dreadful to the Vassal, his life was the atonement for his offence; if a Theoden his Boclande escheated to the Lord of whom he held it; if a Thain it reverted to the King^t.

From the custom of commuting the most flagrant crimes for money, capital punishments are rarely to be met with in the codes of the Germanic nations; it was poverty alone that rendered the murderer and the robber amenable to those venal tribunals, where profit and not justice was equally the object of the prosecutor and the judge, and where the miserable offender was accused and condemned, not for committing the crime, but for being incapable of making the peace-offering of the Weregild and the Freedom^u.

By a law of Alfred it was ordained, that if a Vassal conspired against his Lord, he should forfeit his possessions and lose his life, unless he redeemed it by the payment of the *æstimatio capitis*

^s Litt. 95.

^t —Manus mittat Dominus ad terram quam ei ante adederat, et si terram hæreditariam habeat ipsa in manus regis transeat. L. L. Edw. Conf. 35.

Tacitus informs us that cowards were drowned by the Germans; the same spirit breathes in this passage, Tac. de mor. Germ.

^u Montesqu. l'Esp. des L. l. 30. c. 20.

of his Lord; this however he was generally disabled from performing by the prior effect of the forfeiture w.

It is in this rigorous constitution that we see the extreme solicitude of our Saxon ancestors for the preservation of the feudal ties; the murderer rarely met the reward of his crimes, death was the (almost) inevitable lot of the perjured vassal.

When the fiefs became hereditary, the investiture of the heir was qualified by a certain render to the Lord as an acknowledgment of the favour conferred upon him; this render under the different appellations of Herriot and Relief, was sometimes composed of arms, sometimes of money, and sometimes jointly of both.

The word Hereot or Herriot is a corruption of the Saxon Heregeat (*heregeat*) Bellicus Apparatus x, which consisted principally of the delivery of certain arms and instruments of war by the heir, upon the demise of his ancestor, to the lord.

This usage appears to have been introduced by the Danes in conformity to the general custom of the Feudists y, but even at its first introduction, a certain stipulated sum in proportion to the degree of the vassals was annexed to the render of his arms; in the law of Canute we find the various species of arms and the particular sums ascertained with the greatest precision, according to the different ranks of the holders of Boclande z.

We may collect from another constitution of the same King, that, even at this early period, the Thains had arrogated a right of seizing their Herriots according to their own arbitrary assess-

w L. L. Alfr. 4.

x Sir J. Fort. Aland's Pref. to Fort. on Abf. & Lim. Mon. 98. Spelm. Gloss.

y Book of the Fiefs, i. Tit. i.

z L. L. Cnut. 69.

ments; this however is expressly prohibited, the Thain is confined to his lawful Herriot^a, and is forbid to plunder the effects of his intestate vassal under these specious pretences; hitherto we have found this acknowledgment of the Lord's benevolence invariably described under the appellation of an Herriot, consisting of arms and money; it was in the reign of Edward the Confessor that these incidents were changed.

By an ordinance which has been already referred to, the feudal tenants are directed to preserve their warlike accoutrements, and to transmit them to their heirs, for the performance of the service of their tenures, whenever necessity should require it^b, or in other words, whenever they were summoned into the field to revenge a past, or to defend themselves from a present incursion.

By the service of their tenures we can never understand the render of the Herriots, because that was a *certain* event, the service in question, from the words "*cum opus adfuerit*," of a vague and indefinite nature.

Hence it is evident that the armamentum or mixed species of Herriots was abolished for political reasons under Edward the Confessor; the Herriot was reduced to the simple payment of the usual stipulated sum, which from its relieving the vassal from all other feudal burthens of a similar nature, assume the appellation of Relevatio or Relief, instead of Heregeat or Herriotum which was now become absurd.

In a subsequent law of the same prince we find the following passage, "*Qui in bello ante Dominum suum ceciderit,—sint ei revelationes condonatae, & haberent hæredes ejus pecuniam & terram sine aliqua diminutione*"^c; the Reliefs here are evidently

^a L. L. Cnut. 68. *pihte heregeata justum armamentum.*

^b L. L. Edw. Conf. 35.

^c Domesday, Tit. Waldenford.

in money alone; the warlike accoutrements are no where mentioned.

The revival of the Danish exactions assumes a conspicuous place in the list of Norman incroachments; the appellation of the Reliefs was continued, but their nature was changed; the delivery of the arms of his ancestor was added to the pecuniary render of the heir; and the extent of both was ascertained by the will of the Lord ^d, till they were reduced within their original limits by the popular constitution of Henry the First ^e.

By the law of Edward the Confessor, all Archbishops, Bishops, Earls, and Barons, possessing the various franchises of Sac, Soc, Thol, Theam, and Infangthefe, had a judicial power conferred upon them over their military vassals, and all others who owed service within their respective manors; to be exercised however according to the customs of the realm, and with a proper respect to the prerogatives of the sovereign ^f.

Sac, Sacha appears to have been the right of receiving the fines and amerciaments arising from litigations and payable to the Thain by the Defendant if he was found guilty, and by the Plaintiff, ob falsam clamorem, if he was deficient in the proof of his accusation ^g.

Soc, or Soca signified a franchise, a liberty, or a manor with an exclusive jurisdiction; and sometimes the jurisdiction itself ^h.

Thol was the right of buying and selling, or holding a market within the seignory, and of receiving *Toll* from those persons who had any commodities to dispose of ⁱ.

^d L. L. Hen. 1st. c. 1.

^e Id. c. 14.

^f L. L. Edw. Conf. 35.

^g L. L. Edw. Conf. c. 22. Spelm. Gloss.

^h L. L. Edw. Conf. c. 23. Soc immunitas privilegium be cypicena yocnum. L. L. Alf. 2.

ⁱ L. L. Edw. Conf. c. 24.

Theam or Team was the power which the lord possessed in his court of amercing those who, when called to warranty, were unable or unwilling to make it good^k.

Infangtheſe was the lord's right of judging his vassals, when accused of theft and apprehended within the limits of his seignory^l.

The Vassals of the Feudal Lords who possessed these several rights, (and they alone) could apply for justice, and be impleaded or accused in the domestic court of the manor; the Socmen or Liberi had recourse to the Hundred Courts and the Scyremote^m.

The guilt of the person accused in the Thain's Court, as well as in that of the King, was ascertained by the ordeal of fire and waterⁿ, or by the trial by jury^o, the one the beauteous offspring of justice, the other the foul abortion of the darkest ignorance, and the grossest superstition.

Saxon punishments were generally confined to pecuniary mulcts^p, part of which were appropriated to the injured party, and part to the Count or Thain, as a compensation for the violated peace^q.

The latter, under the appellation of the *Fredum*, is thus described in the barbarian codes, "Si vero plus ad manum suam redimendam dederit, *fredum* Grafioni solvatur, tanquam si de ipsa causa convictus fuisset^r."

^k Id. c. 25. Fœd. Æthelr. cum Anlavo, c. 10. be ceamum.

^l L. L. Edw. Conf. 26.

^m Illi vero qui non habent has consuetudines, coram justitia regis, rectum faciant in hundredis, in wapentachiis, vel in Scyris. Id.

ⁿ L. L. Æthelr. be bongum.

^o Id. ap. Vari. edit. 4. Fœd. Alfr. & Guth. 3. Consult. de Montic. Wal. 3.

^p L. L. Æthelb. 2. & infra.—Inæ. 2. & infra.—Alfr. 16, 26. Æthelst. 6. Cnut. 6.

^q Montesq. l'Esp. des L. 1. 30. c. 20. Spelm.

^r L. L. Salic. Tit. 55. Marculf. Form.

As the seignoral jurisdiction was so profitable, as well as honourable in its nature, we cannot be surprized that the lords were, in this instance, extremely tenacious of their rights, or that a remnant of their power should have been preserved even to this day.

When we survey the Saxon constitution, that rude and irregular mass of Gothic architecture, we are sometimes presented with a proportion so exquisite, a beauty so enchanting, that we no longer despise it as the obsolete establishment of a barbarian tribe, but revere it as the foundation of the Liberty of Britain.

F I N I S.

the original position was to find out, as well as to
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 as this day.

When we find the same condition, the same
 regular mode of Gothic architecture, we are led to
 with a proportion to explain, a power to explain
 no longer doubt as the objects of different nations
 tribes, but reverse is as the relation of the different nations.